



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: March 8, 2011
Appeal #Z-03-11

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional variance (Z-03-11) to permit the construction of a fuel canopy ten (10') feet from the front property line at 515 W. Michigan Avenue.

Summary

This report addresses a petition from Mohsen Sharif, on behalf of Sunset Store, seeking approval of a Dimensional Variance (Z-03-11), to construct a fuel canopy ten (10') feet from the front property line at 515 W. Michigan Avenue.

Background/Project Information

The subject site is located at 515 W. Michigan Ave. The subject lot is located mid-block and is located in the C-3 "Intensive Business" District. The minimum lot standards for the C-3 zone include a minimum lot width of 60 feet and a minimum lot area of 2,900 square feet. The subject lot is approximately 198' x 132' and meets the minimum width and lot area standard for the C-3 zone. The building was originally constructed in 1960 and was remodeled in 2008. A convenient store is currently in operation at the location and the Appellant would like to add a gasoline sales component to the business. The request is to construct a fuel canopy in the front yard, ten (10') from the front property line, allowing enough room for vehicles to drive around those vehicles that are fueling and the building. The zoning ordinance states that structures must maintain a 20' setback in front yards of properties located in the C-3 "Intensive Business" zoning district.

Legal Description

PHILLIPS ADD LOTS 2-3-4

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, February 17, 2011, not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on February 14, 2011, to 55 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is generally located in a neighborhood of mixed uses and vacant lots surrounding the site, west of the downtown area.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Analysis

The Appellant is requesting a front yard setback variance along W. Michigan Ave. that would authorize the construction of fuel center canopy ten (10') feet from the north front property line, contrary to limitations outlined in chapter 1278 of the Planning and Zoning Code. The Appellant has stated in the supporting material in the form of the application that the fuel canopy needs to be constructed in the proposed location to allow enough room for cars to maneuver around those vehicles that are utilizing the gasoline pumps and the building. The Appellant has also stated that the location of the existing building does not allow the canopy to be moved deeper into the site. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. A site drawing has also been provided showing the proposed fuel canopy with dimensions to the front property line and to the existing building.

Is there something unique about this lot or property that makes relief necessary? We would agree that by definition the lot meets the minimum standards for the C-3 zoning district. We would mention that a visual observations while driving out to the subject property shows that a number of buildings along that stretch of Michigan Avenue have been constructed right up to the sidewalk, and allowing a canopy to be constructed ten (10') from the front property line in this case would not be out of character for the neighborhood.



Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-03-11) based on the following findings contained in this staff report.

- 1) Staff finds that there is unusual and practical difficulty specific to the property in question. We understand that the lot meets the width and area standards for the C-3 district; however, the lot is situated in a neighborhood where buildings are placed right up to the front property line.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public. Furthermore, we have not heard from any neighbors objecting to the project.
- 3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the C-3 zoning district in that many of the older buildings in the neighborhood have been built closer to the road than what current ordinance allows.
- 4) Staff believes that if the Zoning Board grants the variance, the setback waiver will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- 1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted. The property owner is willing to invest in the neighborhood by adding gasoline services, including a canopy no closer to the road than other buildings in this particular neighborhood.
- 2) Staff does not believe the appellant has created the practical difficulty associated with this request. In fact, the property owner is reusing an existing building and expanding services for the neighborhood residents.
- 3) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- 4) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that several buildings in this particular

neighborhood are located right up to the sidewalks and makes this particular property and neighborhood unlike most within the city.

- 5) The Appellant has furnished documentation to indicate that practical difficulties do in fact exist. Staff believes that the furnished documentation relative to unique property conditions meet the standards outlined in the Zoning Code authorizing the Board to grant the variance.
- 6) Staff does not believe the term "practical difficulty" is deemed financial hardship in this case.
- 7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.
- 8) Staff believes that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- 10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-03-11)
2. Plan showing the proposed location of the canopy